The Solicitors' Journal

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CURRENT TOPICS

The Late Viscount Simon

OTHERS have summed up and passed their verdict on the great career and achievements of the late VISCOUNT SIMON, whose lamented death occurred on 11th January, 1954. Those who knew him or briefed him when at the Bar or had their cases tried by him on appeal, or even only saw and heard him, can truthfully say that there were giants in his day, of whom he was one, and that is how they will chiefly remember him. He soared far beyond the academic brilliance of his early days. Some have been satisfied with a college fellowship and a fellowship of All Souls, but, conscious of his higher destiny, he chose the Bar and politics, at both of which he attained lofty pre-eminence. No one who experienced the General Strike of 1926 will forget his historic speeches in which with crystal clarity he exposed its illegality, and by which, in the opinion of many observers, he brought the strike to an end. For that service alone he deserves a high place in his country's gratitude. Above all else, he was a great Lord Chancellor and ex-Lord Chancellor, and the law reports and text-books bear witness to his tremendous influence on the development of our law. The son of a Congregational minister, as he was proud to avow in his last-written work " Retrospect," he achieved greatness by virtue of his own transcendent qualities.

Mr. Justice Croom-Johnson

OWING to ill-health, we regret to learn, Mr. Justice CROOM-JOHNSON has resigned his office as a High Court Judge, and we wish him a speedy return to health so that he can fully enjoy his retirement. He has always had a voracious appetite for work and has managed to achieve many of the objects of a lawyer's ambition. Admitted a solicitor in 1901, he was called to the Bar in 1907. In 1927 he took silk; in 1935 he became a Bencher of his Inn, Inner Temple, and in 1938 he became a judge of the High Court. From 1929 to 1938 he sat in the Commons as Unionist Member for the Bridgwater Division of Somerset. In addition to these activities he found time to become an expert on philately and wrote several published works on the subject. His place is taken by Mr. Justice PEARCE, who has been transferred to the Queen's Bench Division from the Probate, Divorce and Admiralty Division.

Solicitors Offering to Do Work for Other Solicitors

THE Council of The Law Society announce in the January issue of the *Law Society's Gazette* that in their opinion it is contrary to r. 1 of the Solicitors' Practice Rules, 1933, for a solicitor to advertise that he is willing to accept instructions from another solicitor to do work for clients of the other solicitor which can only be done by a solicitor holding a practising certificate. There can be no objection, in the Council's opinion, to a solicitor advertising that he is prepared to be the whole-time or part-time clerk of another solicitor, but unless the relationship of master and servant is to exist the advertisement is contrary to r. 1.

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The Criminal Law Review

A WELCOME newcomer in the field of periodical legal literature is the *Criminal Law Review*, the first monthly issue of which begins the New Year. It is a review in the modern style, with generous contributions from both academic and practising lawyers. By way of contrast, for example, there is a close analysis of the requisites of a valid arrest, by Dr. GLANVILLE L. WILLIAMS, Quain Professor of Jurisprudence in the University of London, and a detailed description of "A Day in a Police Court," by Mr. A. E. JONES, a magistrates' clerk. In addition to the articles on general subjects, there are pages of notes on recent developments in practice and procedure and on recent cases, with comments and references The editors state their aim to be to steer between the sensationalism of the Press and the dullness of presentation of the text-book, and to produce something readable, informative and reliable. They hope to include among their readers members both of the bench and of the legal profession, as well as clerks of magistrates, police officers and students of criminology. It is safe to prophesy that this new publication will speedily become indispensable to all whose work is connected with the administration of criminal justice. The publishers are Messrs. Sweet and Maxwell, Ltd.

Control of Building

THE effect of Circular No. 72/53, issued on 31st December, 1953, by the Minister of Housing and Local Government, is to remind housing associations and county councils of the Control of Building Operations (No. 19) Order (S.I. 1953 No. 1793), which prescribes for the calendar year 1st January, 1954, to 31st December, 1954, the financial limits within which building and civil engineering work may be done without a licence. The effect of the order is that, during the calendar year 1954, such work may be done without a licence on any single property if its cost, together with the cost of any previous work carried out on the property without a licence in the same year, does not exceed £1,000 or, in the case of certain special classes of buildings known as "designated buildings," £25,000. The limit for authorised works will be £1,000 as from 1st January, 1954. The definition of designated buildings, which may be described briefly as industrial and agricultural buildings, is unchanged. The term "industrial buildings" means, generally speaking, factories and workshops. It does not include commercial premises, shops, banks, offices, warehouses and the like. "Agricultural buildings" include all farm buildings, except the farmhouse and the farm workers' cottages.

Juvenile Crime: A Practical Scheme

THE appointment of selected members of the Liverpool police force as juvenile liaison officers is given by a special correspondent in *The Times* of 4th January as a main cause of the noteworthy decrease of juvenile crime in Liverpool in 1953 as compared with 1952, and in 1952 as compared with 1951. The scheme began in July, 1949, from which date until December, 1953, juvenile liaison officers dealt with 2,305 offenders, of whom only 210 committed a further offence. In 1949, only sixty-five offences were reported from sources other than the police themselves, such as teachers, shopkeepers and even parents. By 1951 this figure had risen to 417. In the first nine months of 1953 it was down to 150, roughly the same proportion of the total number of offences reported. The general goodwill towards the liaison officer was not gained in a day, but called for diligent and tactful work. Great care had also to be exercised to avoid encroaching on the work of probation officers. The scheme, according to the correspondent, is felt now to have passed well beyond the experimental stage and to have proved its value.

Practice Notes on Registered Land Conveyancing

THE current issue of the *Law Society's Gazette* contains the first sixteen of a series of Practice Notes arising out of meetings of the Joint Advisory Committee of The Law Society and H.M. Land Registry, which has been set up following the public inquiry held in October, 1951, at Kingston-on-Thames, as to the advisability of extending compulsory registration of title to the County of Surrey. The present notes contain valuable guidance on restrictive and other covenants, options, estate contracts, merger of leases, merger of rent-charges, valuations by solicitors, sale in plots, first registrations and a number of other important matters.

Town Meetings

THE Association of Municipal Corporations believes, according to a special correspondent writing in *The Times* of 5th January, that the view that the "town meeting" is undemocratic has prospered to some extent in the sympathies of the Minister. The procedure for the meeting and for the poll by which it may be followed is laid down in s. 255 and Sched. IX to the Local Government Act, 1933. The following figures, wrote the correspondent, show how badly town meetings have been attended: Sheffield, 500; Liverpool, 20; Bristol, 100; Brighton, 106; Nottingham, 150; Bradford, 500; and Kingston-on-Hull, 350. The general purposes committee of the Association of Municipal Corporations have stated that "a town meeting can be—and often is—'packed' by one side or the other, with the result that a small interested body can defeat at the meeting what would generally be considered a beneficial measure." As for the poll, only rarely has it reached 20 per cent.; sometimes it has been nearer 3 per cent. (In the poll in Birmingham last week the figure was 3·81 per cent.) The case for the town meeting was put by Brigadier FRANK MEDLICOTT in a letter in *The Times* of 9th January. He wrote: "If this right were taken away from the individual elector he would be left only with the remedy of giving notice of objection to the Minister or of appearing before the Parliamentary Committee dealing with the Bill at Westminster." He added: "No candidate in a local election would normally think it appropriate to mention legislation which he would expect the council to promote. When, therefore, the local authority has need to initiate legislation it is not unreasonable that it should seek direct contact with the electorate, and this is one of the reasons for the town meeting." He concluded that town meetings were a useful example of a really effective form of referendum.

About Indexes

ENCLOSED with this issue is the Annual Index and List of Statutes to Volume 97 of THE SOLICITORS' JOURNAL, covering the whole of the year 1953. Subscribers who desire to have their issues bound should now forward the numbers, together with the index, to the Binding Department, 102–3 Fetter Lane, London, E.C.4. Instructions and remittances should be sent separately. A reader has recently suggested that a consolidated index issued every fifth year and covering the previous five years would be a useful complement to the annual index. Such a consolidated index could, of course, only be undertaken if there were evidence of a sufficient demand to make its production economic. Subscribers who would wish to purchase such an index at a price not exceeding 5s. are therefore asked to notify the Editor.

Procedure

XXXII—TACTICAL POINTS IN ARBITRATION PROCEEDINGS

In a recent article on the scope of arbitration clauses (97 Sol. J. 789) we wrote of a case (*Kruse* v. *Questier & Co., Ltd.* [1953] 2 W.L.R. 850; 97 Sol. J. 281) in which a judge of the High Court was called upon to consider whether an arbitrator had had jurisdiction to make a certain award. The occasion was the hearing of a preliminary point of law in an action brought by the party who had been successful in the arbitration against the other party for enforcement of the award. Such an action typifies one of several situations in which not only the decisions but also the basic jurisdiction of private arbitrators may be examined by the courts—control points, so to speak, in the regulation of minor disputatious traffic. If made with jurisdiction the arbitrator's decision is normally final, subject to any right of appeal to further arbitrament which has been reserved in the submission, and to the powers of supervision, inherent or statutory, possessed by the courts. The invocation at the proper stage of these powers raises several niceties of procedure which it may be vital to observe.

Standing by itself an arbitration agreement (usually a more or less perfunctory clause in the contract whereby some commercial transaction is effected) is not a bar to proceedings in the courts for relief under the main contract. No such clause can completely oust the jurisdiction of the court, even if it contains the *Scott* v. *Avery* wording making an award a condition precedent to the bringing of an action. But the Arbitration Acts have always provided a special sanction for breach of a written agreement to arbitrate. This sanction is, as Lord Macmillan emphasised in *Heyman* v. *Darwins, Ltd.* [1942] A.C. 356, not damages, but a type of specific enforcement initiated by an application under s. 4 (the section is so numbered alike in the 1889 and in the 1950 consolidating Acts) to stay any proceedings at law which have been brought despite the clause. It is a negative kind of specific performance: the court does not compel arbitration, but may refuse all other remedy. Except in cases falling within s. 4 (2) of the Arbitration Act, 1950, which re-enacts Protocol arrangements of 1924, the court in England has a complete discretion whether or not to grant a stay. Lord Macmillan calls it a power of dispensation, and remarks on its singularity as compared with the court's powers as to other parts of a contract. The courts of law, in other words, cannot be excluded by an arbitration agreement, but they will in certain circumstances condescend to step down in favour of an informal tribunal of the parties' choice.

If a party preferring to stand by the arbitration agreement does not apply in an action brought by the other party for a stay of that action, he may still, if the arbitration clause is in the *Scott* v. *Avery* form, set up the clause as a substantive defence to the action. This course may be a useful alternative to bear in mind if for some reason the application for a stay is not made before the defendant takes some step in the action. After taking such a step he cannot apply for a stay (s. 4). There are a number of cases illustrating the meaning of "a step" in this connection, some of which show that a comparatively passive course of conduct by a defendant may bar his right of application. In particular it may be useful to note that if he is served with a summons for judgment he should apply for his stay before the summons is heard, though, if he does that, he can if he wishes also file an affidavit for leave to defend in case his application for a stay should be refused (*Pitchers, Ltd.* v. *Plaza (Queensbury), Ltd.* [1940] 1 All E.R. 151).

A condition precedent clause, then, may be a valid defence to an action brought in defiance of it. But some observations of Jenkins, L.J., in *Getreide-Import-Gesellschaft m.b.h.* v. *Contimar S.A.* [1953] 1 W.L.R. 793; 97 Sol. J. 434, show that care is necessary if it is desired to combine the defence that the action is barred because of the clause with a defence on the merits. In his lordship's view a submission in bar should be made before the party making it engages upon an argument on the merits of the dispute which he is seeking to have determined by arbitration. If this sequence is reversed, or if the two lines of defence are run together, and if a decision on the substantive point is given by the court against the party setting up the *Scott* v. *Avery* clause, then the only result of upholding the submission in bar would be that the case would go pointlessly to an arbitrator who would be bound to follow the court's decision on the merits.

When once an award has been made there are fresh courses open to the parties for bringing the matter before the court. The simplest, which is applicable when all that is required is that the award shall be rendered enforceable, is the entry of judgment in the terms of the award under s. 26 of the 1950 Act. The alternative of bringing an action on the award is an invocation to the inherent jurisdiction of the court, and, unlike the express powers and procedures deriving from the Act, is appropriate whether or not the submission to arbitration is in writing or otherwise complies with the Act. It is the only method of enforcement which the court will entertain if there are any doubtful features about the award, for in that case an application for leave to execute it as a judgment would be refused.

In an action for enforcement, the jurisdiction of the arbitrators has to be affirmatively established. What the arbitrators themselves may have decided as to their power to entertain a particular matter is of no effect except as determining their own course of action, but an award is not invalidated if it expresses a finding on this question, though it is of no practical value if it expresses no other finding. In other words, as Devlin, J., has recently held in *Christopher Brown, Ltd.* v. *Genossenschaft Oesterreichischer m.b.h.* [1953] 3 W.L.R. 689; 97 Sol. J. 744, an arbitration body is in the same position in this respect as any other inferior tribunal.

Some arbitration agreements contain time clauses, limiting the period during which a claim under the contract must be made. It is a matter of construction whether such a clause bars altogether an out-of-time claim, or whether it merely goes to the jurisdiction of the arbitrator, an action at law or other remedy being left to be governed by the ordinary law of limitation. In the latter case it may be competent to deal with the validity of any time objection as an issue in the arbitration itself, subject to a case stated on any legal point; there is no rule that a time clause affecting only arbitration proceedings must be pleaded as a bar to the arbitrator's jurisdiction or not at all (*Smeaton Hanscomb & Co., Ltd.* v. *Sassoon I. Setty & Co. (No. 1)* [1953] 1 W.L.R. 1468; 97 Sol. J. 862).

A variant of the enforcement action is exemplified in the *Getreide* case. There, the plaintiffs, in whose favour an award had been made, disputing that a certain notice of appeal

against it complied with the requirements of the arbitration contract, claimed by action a declaration that the award was valid, final and conclusive and that the defendants could not prosecute their appeal from it, and they asked for a temporary injunction accordingly. It was in this action that the defendants sought to rely on the *Scott* v. *Avery* clause. This clause took the form of an express agreement that an award from the arbitration tribunal should be a condition precedent to the right of either contracting party to sue the other in respect of any claim arising out of the contract. Morris, L.J., pointed out that the plaintiffs had an award in respect of the claim arising out of the contract. The present dispute as to the validity of the notice of appeal was in respect not of the contract but of facts arising subsequent to the award. The decision of Sellers, J., granting the declaration was upheld, but it appears that the injunction proved unnecessary because the arbitration appeal committee had stayed their hands upon issue of the writ. The procedural moral is that an action for such a declaration is an effective way of obtaining the court's decision as to the jurisdiction of an arbitrator, in case the dispute as to that jurisdiction arises subsequently to the making of an award.

Another recent case which illustrates that there is a time and place for every contention in matters of arbitration is *H. E. Daniels, Ltd.* v. *Carmel Exporters & Importers, Ltd.* [1953] 3 W.L.R. 216; 97 SOL. J. 473. Here there were two disputes, not emerging concurrently, the first of which concerned the quality of certain aniseed which had been sold by the defendants to the plaintiffs. That was taken to arbitration and an award made in favour of the buyers. Later the buyers alleged that they had discovered a hidden fault in the goods and claimed a second arbitration on the ground of misdescription. The second arbitration was duly held, but in the absence of the sellers, who refused to participate, relying on the view that, the contract having been arbitrated once, the matter was concluded as if by *res judicata*. This was again a question of the arbitrator's jurisdiction. How could the sellers raise it so as to impeach the second award? First they sought to set aside the award, but Lord Goddard, C.J., held that the powers of the court in that behalf could not be called on by a party denying the arbitrator's jurisdiction. (An application to set aside an award or part of it *is* appropriate when the arbitrator has wrongly exercised a discretion vested in him—where, for instance, he has made an order that the party shall bear the costs of an award in the form of a special case "however the court answers the questions" raised by the case (*Smeaton Hanscomb & Co., Ltd.* v. *Sassoon I. Setty, Son & Co.* (*No.* 2) [1953] 1 W.L.R. 1481; 97 SOL. J. 876), or has failed without adequate reason to give costs to the successful party (*Lewis* v. *Haverfordwest R.D.C.* [1953] 1 W.L.R. 1486; 97 SOL. J. 877).)

Having failed in their attempt to set aside the award, the sellers in the *Daniels* case saved up their defence of *res judicata* until the buyers brought an action to enforce the award. But once more Pilcher, J., held that they could not succeed. The second dispute was within the arbitration agreement just as was the first. That arbitration agreement bound the parties to observe the arbitrator's award subject to the statutory right to require a special case. The arbitrators had before them correspondence in which the point of jurisdiction—a question of law—was raised, and they had decided it in favour of the buyers. Had the sellers not stood aloof from the second arbitration, had they required the statement of a special case on this point of law by the arbitrators, there is every possibility that they would have succeeded in avoiding the consequences of the second award, for Pilcher, J., would obviously have been prepared in that event to apply *Conquer* v. *Boot* [1928] 2 K.B. 336, and to hold that all disputes arising out of a single cause of arbitration ought (on the common-law analogy of *Brunsden* v. *Humphrey* (1884), 14 Q.B.D. 141) to be submitted to one tribunal at one time. As it was the award was binding upon them.

The sellers in the *Daniels* case did not dispute the original existence of an arbitration submission. Lord Goddard's judgment on their earlier application throws out the hint that if a different case arose in which a person contended that he had never agreed to be bound by arbitration, but had suddenly found an award made against him, he could claim by action a declaration that he was not bound by the award. Whether he did this, or awaited the enforcement of the award by action or originating summons and then put in a defence, would of course depend on the realities of the situation.

J. F. J.

A Conveyancer's Diary

JOINT INTERESTS AND GRANTS OF ADMINISTRATION

IT is the practice, apparently, of the registrars of the Probate Division to refuse to grant administration if a joint interest arises under the will or intestacy except to two or more individuals or to a trust corporation. The justification for this practice is said to be s. 160 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, the effect of which is to require two or more individual administrators, or a trust corporation as administrator, wherever there is a minority or wherever a life interest arises under the will or intestacy. The interest of a joint tenant, it is said, is liable to be extinguished if that joint tenant should predecease his fellow joint tenant by the operation of the *jus accrescendi*, and if an interest which is liable to cease on death (to borrow from the vocabulary of the draftsman of Finance Acts) is not a life interest, what is it? The answer, I suggest, is that it may either be a life interest, or an interest in joint tenancy, or both, but the fact that these two interests in property are subject to a common incident does not make them identical.

The essential characteristic of a joint tenancy, the incident which is entirely peculiar to it and which no other interest in property can ever be subject to, is, of course, the *jus accrescendi*, and it is impossible to equate an interest which exhibits this unique characteristic with an interest which does not. That is the fundamental answer to what seems to me to be an extraordinary fallacy, but it is not the only answer. Another sound reason for keeping these two interests distinct, as they have been kept since at least the day of Bracton, and probably a much earlier period, is to be found in an examination of the results of an assignment of these interests. If a person entitled to an interest for life assigns his interest, the interest is not destroyed but continues in the assignee as an interest *pur autre vie;* the change which the assignment involves is a change in name only, and not in duration or quality. But if a joint tenant assigns his interest, the assignment operates as a severance of the joint tenancy, the assignor's joint interest is thereby destroyed,

and what passes by the assignment is an interest in severalty.

Such an interest need not, of course, be an absolute interest. It may be a lesser interest, corresponding in each case to the interest which was held in joint tenancy. It is common to look upon the typical instance of a joint tenancy as one in which the property held jointly is held for a fee simple or an absolute interest, and it may be that this tendency sometimes leads to an identification of what is merely typical with what is essential. Perhaps it is thinking on these lines that has assisted in the propagation of the probate practice to which I have drawn attention. But in fact Littleton, the first systematic writer to describe and correlate the various interests in property existing at law, starts his chapter on joint tenancy by an example in which two or more persons are enfeoffed for the term of their lives or the term of another's life, by force of which feoffment it is said that they become seised as joint tenants (s. 277); it is only later in this chapter that what seems to us to be the more usual case of property being limited to two or more persons jointly in fee simple or absolutely (according to the nature of the property) is mentioned. It is clear, then, that from the earliest times a person could hold property jointly either for the largest interests known to the law or for some lesser interest, e.g., for life. The converse of this is that if a person is entitled to an interest in property for his life, he may be so entitled in severalty or jointly with others, a distinction which would be quite impossible if an interest for life were identical with a joint interest.

A passage from Coke's Commentaries upon Littleton illustrates this. In speaking of the *jus accrescendi*, the author observes that this does not necessarily give each of the joint tenants an equal chance to succeed to the whole; that may be so where the joint interest is an interest in fee simple or an absolute interest, but it is not so where two have a joint estate for the life of one of them. For in such a case, if that one who is the *cestui que vie* should die in the lifetime of the other, the estate is determined and there is nothing to pass by the *jus accrescendi* to the survivor; whereas, if the other joint tenant should die in the lifetime of the *cestui que vie*, the latter has the whole estate and becomes thenceforth sole tenant for his own life (Co. Litt. 181*b*). This is not an exception to the rule that on the death of a joint tenant his interest accrues to the survivor or survivors; as is explained in Challis on Real Property (3rd ed., p. 366, where this example from Coke is cited), it still remains true that each joint tenant, upon the death of the other, takes the whole estate, but in this particular case the whole estate which the survivor takes is, by the dropping of the life of the *cestui que vie*, reduced to nothing.

This short discussion of some of the essential differences between the characteristics of life interests and joint interests respectively will doubtless seem to many to be nothing more than an excursion into the realm of the obvious, and from that view I would not dissent. But the alleged similarity between these interests has led to a practice of the court which, however erroneous it may appear to the real property lawyer, cannot be dismissed out of hand: the similarity between these two kinds of interest based on their common liability to a certain incident must be shown to be what it is, a superficial similarity, not an identity in essentials, and perhaps this glance backwards into the history of the subject will help to dispel what can only be described as a heresy. From the strictly practical point of view this probate direction does not, probably, cause much inconvenience, for in many cases any difficulty in finding an additional person willing to undertake the duties of an administrator can be circumvented by a severance of the joint interest before a grant is obtained. But circumstances may arise in which a severance is difficult or even impossible, at least without the expenditure of money and time, and in such a case the person prepared to call the validity of the present practice into question should not lack encouragement. Perhaps these observations will apply the stimulus that has up till now been absent.

"A B C"

Landlord and Tenant Notebook

CONTROL OVER SUB-LETTINGS

THE immediate effect of the reversal, in *Drive Yourself Hire Co. (London), Ltd.* v. *Strutt and Another* [1953] 3 W.L.R. 1111 (C.A.); 97 SOL. J. 874, of Lynskey, J.'s decision ([1953] 2 W.L.R. 953; 97 SOL. J. 317: "Notebook" article *ibid.*, p. 381) was that the second defendant found himself unprotected by the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (3), after all—not being, in the opinion of the Court of Appeal, a sub-tenant to whom the premises claimed had been lawfully sub-let. But the reasoning by which this result was achieved makes the decision an important one for more general and, presumably, more lasting purposes than that of the interpretation of that subsection, and should make some contribution to the solution of a problem which has vexed many landlords: how, in the absence of privity of contract, to prevent sub-tenants from disposing of their interests contrary to their (the head landlords') wishes and intentions.

Shortly, the facts were as follows. In 1931 the plaintiffs' predecessor in title let a flat to the first defendant for a term of twenty years, the tenant covenanting not to assign or sub-let or part with possession without the landlord's consent. Next year she sought and obtained consent to a sub-letting for ten years to one *D S*, but the head landlord stipulated and the sub-tenant agreed not to assign, sub-let or part with possession without the consent of the superior landlord. This sub-lease was later on extended so as to expire one day before the expiry of the twenty years of the head lease. In 1937, *D S* assigned to a limited company—with the consent of the superior landlord. The company was one formed for the purpose of managing the estates of its managing director, and the licence granted by the superior landlord expressly provided that that individual, who was to become the second defendant in the action, should be entitled to use and occupy the flat. In 1950, liquidation of the company being proposed, the residue of the sub-lease was assigned to the second defendant, this being done with the consent of the first defendant but without that of the plaintiffs, who had acquired the reversion to the head-lease. When sub-lease and head-lease expired in quick succession, the second defendant laid claim to the protection of the Rent Acts. That is to say, as regards the one day, he relied on the first subsection of s. 15 of the 1920 Act referred to above as being "a tenant who by virtue of the provisions of this Act retains possession, etc."; as regards what followed, on subs. (3): "Where the interest of a tenant of a dwelling-house to which this Act applies is determined . . . any sub-tenant to whom the

premises . . . have been lawfully sub-let shall . . . be deemed to become the tenant of the landlord, etc."

The issue was, accordingly, whether he was a tenant to whom the premises had been lawfully sub-let despite the absence of the plaintiffs' consent, which, incidentally, the first defendant and her solicitors had considered unnecessary.

One point which was taken was that s. 15 (3) could not afford the second defendant any protection because he was not a person to whom the premises had been sub-let at all, but was an assignee of such a person. While agreeing that "there was force in this," Somervell, L.J., considered that, having regard to the definition of "tenant" in s. 12 (1) (*f*) ("... includes any person deriving title under the original tenant"), s. 15 (3) ought to be read as "... to whom the premises ... have been lawfully assigned by or under a sub-tenant to whom they have been lawfully sub-let."

The question thus became one of the effect of the clause in the licence to the first defendant, making it a condition that the sub-tenant should covenant not to assign without the superior landlord's consent, the superior landlord not being a party to the sub-lease containing that covenant. According to Lynskey, J., the mesne tenant as covenantee could waive and had waived that covenant; but the Court of Appeal made rather a different approach to the problem. That covenant, it was held, was inserted for the protection of the superior landlord, and the licensee was impliedly obliged not to waive it; in any event, failure to observe it (Somervell, L.J., took the view that the solicitors concerned had literally failed to observe it) rendered the assignment to the second defendant unlawful and the sub-tenancy equally unlawful.

Denning, L.J.'s judgment gave us rather more reasoning to support the same view, both statute law and decisions being cited. By the Law of Property Act, 1925, s. 56, a person may take the benefit of any covenant respecting land although he may not be named as a party to the instrument. The case, it seemed to Denning, L.J., seemed to fall precisely within the words of that section. The answer that suggests itself would, of course, be, "Suppose that it does so fall: what is the effect of so weak a word as 'may'?" But the learned lord justice's judgment then gives us a thorough and historical survey of the "fundamental principle of our law that only a person who is a party to a contract can sue on it," demonstrating that that principle was in fact without foundation, and that the rule had not been legitimately introduced into the law. Such decisions as *Dutton* v. *Poole* (1678), 2 Lev. 210, in which it was laid down that a promise made for the benefit of a third person not party to the transaction could be enforced by that person, had never been overruled; and, coming to the statute, a modern instance of a case in which the Law of Property Act, 1925, s. 56, was successfully invoked was *Stromdale & Ball, Ltd.* v. *Burden* [1952] Ch. 223: a company was held entitled to sue on an option to purchase expressed in a deed of licence to which it had not been a party.

The learned lord justice also mentioned, in this connection, *Smith and Snipes Hall Farm, Ltd.* v. *River Douglas Catchment Board* [1949] 2 K.B. 500 (C.A.); 93 SOL. J. 525, but, as his judgment brings out elsewhere, that decision turned on s. 78, not on s. 56, of the Law of Property Act, 1925 (though it is right to say that Denning, L.J., himself cited s. 56 in his judgment). Section 78 does contain something more definite than "may": a covenant relating to any land of the covenantee *shall* be deemed to be made with the covenantee and his successors in title and persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed. In the case cited, a tenant farmer holding from year to year was held to be entitled to enforce an agreement to maintain river banks made by his landlord's predecessor in title. The plaintiffs in *Drive Yourself Hire Co. (London), Ltd.* v. *Strutt* were not in an analogous position; if the sub-tenant's covenant did relate to his land, they did not derive title under the mesne tenant. (For a discussion of *Smith* v. *River Douglas Catchment Board*, see 93 SOL. J. 584.)

One cannot, however, easily criticise the proposition that this was the sort of case which s. 56 of the Law of Property Act, 1925, must be considered to have contemplated; and, as suggested in my opening paragraph, one result may be that *Drive Yourself Hire Co. (London), Ltd.* v. *Strutt* may prove useful in cases in which "Rent Act" security of tenure is not a consideration. Consider the facts of two forfeiture actions in which the trustees of Dulwich College (unaided by town planning legislation) sought to preserve the amenities of a residential district (*Berton* v. *Alliance Economic Investment Co.* [1922] 1 K.B. 742 (C.A.) and *Barton* v. *Reed* [1932] 1 Ch. 362). In each of these, the lease of a house had contained covenants against alienation, against business, against nuisance or annoyance and permitting or suffering such; and under-leases had substantially repeated those covenants, the under-lessees covenanting with the mesne tenants only. In each case the under-lessees had flouted the last-mentioned covenants, sub-letting the houses in parts. But in neither case was any attempt made to fix the under-tenants, still less the sub-under-tenants, with liability by virtue of the Law of Property Act, 1925, and the actions were fought on the issue whether the lessees had suffered or permitted business, or annoyance (of the plaintiffs). What *Drive Yourself Hire Co. (London), Ltd.* v. *Strutt* suggests is the thought that, though licences to underlet may not have stipulated for covenants bringing in the head landlords in those cases, the under-lessees and, possibly, their tenants could, by virtue of the Law of Property Act, 1925, have been held to be under an obligation to the unnamed head landlords in question. And it may be pointed out in this connection that, though the first and second defendants in the recent case had complied with the head landlord's demand for a covenant, it is perhaps questionable whether, if they had studied the Landlord and Tenant Act, 1927, s. 19 (1), they could not have resisted that demand.

R. B.

CITY OF NOTTINGHAM DEVELOPMENT PLAN (PART II)

The above development plan was on 31st December, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situated within the area which on 1st April, 1952, was added to and now forms part of the said city by virtue of the provisions contained in the Nottingham City and County Boundaries Act, 1951. It does not relate to land which already formed part of the city before 1st April, 1952. A certified copy of the plan as submitted for approval has been deposited for public inspection at the office of the Town Clerk, the Guildhall, Burton Street, Nottingham, and is available for inspection free of charge by all persons interested between 9 a.m. and 1 p.m. and between 2.30 p.m. and 5.30 p.m. on Mondays to Fridays, and between 9 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 27th February, 1954, and any such objection or representation should state the grounds upon which it is made. Persons making an objection or representation may register their names and addresses with the Town Clerk and will then be entitled to receive notice of the eventual approval of the plan.

HERE AND THERE

FREE FOR ALL

A QUEEN'S Bench judge, who has been a judge long enough to know by experience what he is talking about, was telling me lately that in his opinion the whole majestic system of assizes is running towards a standstill because of the excessive burden of the work imposed on it. Not long ago one of his brethren at Leeds, taking a retrospective look at the visitors' book at the judges' lodgings, found an entry indicating that in 1907 (I think it was) Grantham, J., disposed of all the business there single-handed in four days. His modern successors, reinforced to the strength of four, were taking five weeks to clear their lists. Almost everywhere both the Crown lists and the civil lists are swollen, the latter, said the judge, for three main reasons: the disappearance of the defences of common employment and of contributory negligence and the establishment of legal aid. To the idea of legal aid he was by no means hostile. Indeed, in his view, the theoretical case for it was unanswerable, but since human beings are what they are, the aided plaintiff has strong incentives to take a chance when he has everything to gain and nothing to lose. He was far from satisfied with the implications of the official statistics said to indicate that seventy (or was it eighty?) per cent. of the State-aided litigants were successful; this might well be so if you counted undefended divorces, but in normal litigation the figure would be more like five per cent. He had an interesting idea for sifting the merits of cases before they were carried forward to a fight: let defendants have the option (not the obligation) to come to the committee before delivery of briefs and put their cards on the table. Very often, he was convinced, a state of affairs would then be disclosed in which it was obvious that the plaintiff could not succeed. He recalled a sequence of sixteen consecutive cases in which he had dismissed actions by State-aided plaintiffs. In the seventeenth, in which he gave judgment against the defendant, the Court of Appeal reversed his decision. When a member of the court told him privately that in that case he had allowed his heart to run away with his head, he mentioned the previous sixteen cases. Most people will agree that unaided defendants are placed at an unreasonable disadvantage when sued by aided plaintiffs; if the State chooses to help them it should assume the obligation for their costs in the event of failure. It was Lord Darling (adapting an earlier *dictum*) who said that the courts are open to all "like the Ritz Hotel." Now they are far more like a Butlin's holiday camp.

THE INDESTRUCTIBLE BORDER

IT must be most satisfying to Scottish national sentiment to note how obstinately, in spite of legislative trimming, the contrasts between the northern and the southern kingdom still retain so much of their ancient outlines. It was with a shock of delighted surprise that we were made aware early this year that, given proper legal advice and efficient co-operation, fugitive love can still find a matrimonial sanctuary in Scotland, even after two separate statutory attempts to slam the gates for good and all: the Act of 1856 which imposed a residential qualification on the parties, and the Act of 1940 which abolished marriage by declaration *de presenti*, the informal marriage before witnesses which was the main prop of the Gretna Green industry. There was no special magic in that particular locality, though the combination of an agreeable name, convenient proximity to the English border and the inspired showmanship of the inhabitants created for southerners a popular impression to the contrary. All over Scotland marriages could be performed without any previous legal notification. (In 1933, for instance, there were 4,007 such unions). They were abolished on the recommendation of a departmental committee in 1935 under the chairmanship of a distinguished Scottish judge, Lord Morison. For Mr. and Mrs. James Goldsmith (as they now are) it is fortunate that Parliament did not adopt another of the committee's recommendations, that a marriage contracted by a minor in Scotland with a foreigner under the law of whose country the marriage would not be valid should be null and void, unless the consent of the minor's parent or guardian was given. The sentimentalist lurking in virtually every one of us has been delighted by the transcription into modern terms of all that romancers had ever put into the Gretna Green story in its best gilded splendours—the young and handsome pair in headlong elopement, the furious pursuit of a fabulously wealthy parent, the great clanking machines of the law set into motion in two capitals, the secret hiding place. Purely from the legal point of view one is much impressed by the Rolls Royce service provided by the Scottish solicitors to the happy fugitives—sound advisers, discreet hosts and joyful witnesses at the eventual ceremony. Only fanatical legal technicians will be disappointed that a Court of Session decision on a promising point of law was frustrated by the opposition's decision not to fight out the final battle in the courts on the interim interdict obtained from the vacation judge.

FOR YOUR PRECEDENT BOOK

WHEN you and I have a dispute with a tradesman we, of course, express ourselves lucidly and succinctly but somehow they quite often remain recalcitrant. It is probably because we fail to strike the right note of simple directness with just a ring of legal phraseology to make it effective. The other day I happened to see a correspondence conducted by a young man who is a junior clerk in one of the Inns of Court. He was claiming compensation from a firm of cleaners for damage to his father's raincoat. Typed on chambers note paper, here is what he wrote:—

> "Your suggestion as to a settlement is unsatisfactory.
>
> My father denies that the said raincoat came into contact with any form of acid whatsoever.
>
> I think your technical department will agree that material affected by acid discolours or holes. The raincoat when sent to you was not in like condition and the same is denied.
>
> The only settlement my father will accept is:—
>
> (*a*) A sum equal to the moneys paid for the raincoat when purchased; or,
>
> (*b*) A raincoat in like condition as the one in question when handed to you for cleaning."

The next shot was as follows:—

> "I thank you for your letter of the 11th inst.
>
> Paragraphs 1, 2, 4 and 5 of your letter are denied.
>
> The suggestion in paragraph 3 is accepted."

It produced results, a new raincoat. You or I would have taken far longer and maybe finished up with a compromise.

RICHARD ROE.

TALKING "SHOP"

January, 1954

The rain it raineth on the just
And also on the unjust fella:
But mostly on the just because
The unjust steals the just's umbrella.

A solicitor friend's comments upon s. 30, Finance Act, 1953, move me to share these solemn reflections of Charles, Baron Bowen. My friend reminds me that the section empowers the Commissioners of Inland Revenue to accept, in payment of estate duty or settlement estate duty, certain objects kept in certain buildings. Both the objects and the buildings must pass the statutory tests, but for present purposes I am asked to assume that the provisions of this section are satisfied. The other material facts are as follows:—

(1) The whole of the landed estate of *H* has been sold with the exception of Hatter's Castle, one of the stately homes of England, which has been presented to the National Trust, and is thus a prescribed building within the terms of s. 30 (1) (*d*).

(2) The trust property now consists of (*a*) invested capital moneys under the Settled Land Act to the value of £500,000, and (*b*) chattels to the value of £250,000 of artistic, etc., importance, settled to devolve with the estate, all kept at Hatter's Castle and none of them dutiable until sold.

(3) The limitations of the settlement confer successive life interests upon *A*, *B* and *C* in that order, with remainder to *C's* first and other sons successively in tail male, etc., with remainders over.

(4) All the settled chattels are likely to qualify for the Treasury fiat under s. 30 (1) and so be available *in specie* to discharge estate duty. If so applied, their acceptance does not constitute a sale attracting further duty: see s. 30 (3).

(5) *A* has died at a recent date (that is, since the Act came into operation) and *B*, the new tenant for life, is now debating with his Settled Land Act trustees how the estate duty payable upon *A's* death should be raised.

(6) *A* has left no other aggregable property. (With an income of £20,000 a year gross, this was quite a feat on *A's* part, but we must do something to help the mathematicians. Let us assume, then, that his debts were rather large.)

Here, says my friend, is the fiscal umbrella, and now let us see how this unjust—or should we say, merely selfish—tenant for life *B* can steal away both with and under it, in a most unfiduciary manner. And reaching for a clean piece of blotting-paper off my table he rapidly covers it with the following figures, for which this author accepts no responsibility, even E. and O.E.:—

METHOD A (USING CHATTELS FIRST)

(i) *Death of A*

	£
Estate duty payable, 65 per cent. of £500,000	325,000
Use chattels in part payment	250,000
And make up balance by sale of investments	75,000
	£325,000

(ii) *Death of B*

(Assuming no change in rate of estate duty)

Estate duty payable, 65 per cent. of £425,000	£276,250
Discharge whole from investments	£276,250

(iii) *Result*

C is left with no chattels and a life interest in investments to the value of £148,750, made up as follows:—

Investments before *A's* death		£500,000
Less estate duty sales—		
A's death	£75,000	
B's death	276,250	
		351,250
Residue		£148,750

METHOD B (USING INVESTMENTS FIRST)

(i) *Death of A*

Estate duty payable as before	£325,000
Discharge whole from investments	£325,000

(ii) *Death of B* (*same assumption*)

Estate duty payable, 55 per cent. of £175,000	£96,250
Discharge whole from chattels	£96,250

(iii) *Result*

C is left with a life interest in investments to the value of £175,000 and chattels to the value of £153,750 (i.e., £250,000 less £96,250). Thus, method B improves upon method A by £180,000 (investments £26,250 and chattels £153,750). If s. 30, Finance Act, 1953, continues in force for so long, these chattels should suffice to frank at least two more payments of estate duty on the investments, thus preserving them intact for *C's* son *D* and his grandson *E*.

METHODS A AND B COMPARED

Method A shows quite clearly, I think, how a tenant for life can steal off with the fiscal umbrella of s. 30. True, by this method he maintains his gross income at the highest level, but much of this income will disappear in sur-tax, and for this reason his satisfaction may be small; he also succeeds by this method in saddling the estate with a higher rate of duty on his own death and leaves none of the chattels available to pay it.

On the other hand, who would be so bold as to assert that in adopting this first method he is wholly short-sighted or wrong-headed? Do fiscal umbrellas last for ever? Too often they resemble their material counterparts; they suffer fair wear and tear, shed their primal gloss, and are unaccountably abstracted or vanish overnight. The figures may be against method A, but the precept of bird in the hand certainly favours it.

It does not strike me as an easy decision for *B*, and it becomes no easier if he must make it upon the semi-fiduciary principles

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expected of a model tenant for life exercising his statutory powers. Moreover, my friend asserts that there are many fascinating permutations between the two extremes of methods A and B, such as the use in varying proportions, on this, that or the other death, of chattels *and* investments to meet estate duty. But already the blotting-paper is finished and I must beg leave to resign the subject at this point to the arithmeticians.

" ESCROW "

BOOKS RECEIVED

" Current Law " Income Tax Acts Service. [" CLITAS."] Release 15, 18th December, 1953. London: Sweet and Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green and Son, Ltd.

The Iron and Steel Act, 1953. Reprinted from Butterworth's Annotated Legislation Service. With General Introduction and Annotations by WALTER GUMBEL, LL.B., of the Inner Temple and South-Eastern Circuit, Barrister-at-Law, and KENNETH POTTER, M.A., of the Middle Temple and South-Eastern Circuit, Barrister-at-Law. 1953. pp. 5 and (with Index) 97. London: Butterworth & Co. (Publishers), Ltd. 17s. 6d. net.

Butterworth's Costs. Second Cumulative Supplement. Edited by B. P. TREAGUS, Principal Clerk, Supreme Court Taxing Office, Royal Courts of Justice, and H. J. C. RAINBIRD, of the Supreme Court Taxing Office, Royal Courts of Justice. Including a Section on Quarter Sessions by ALFRED SWIFT, Deputy Clerk of the Peace, County of London Quarter Sessions. 1953. pp. xx and 213. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Middlesex. New Edition. By Sir CLIFFORD RADCLIFFE, C.B.E., D.L., Clerk of the Peace and Clerk and Solicitor of the County Council. 1954. pp. (with Index) 240. London: Evans Brothers, Ltd. 10s. 6d. net.

The Finance of Landownership. By W. WALKER-WATSON, Principal of the Southern Professional Services of The Country Gentlemen's Association, Ltd., Honorary Secretary of the Landed Estate Companies Association. 1954. pp. x and (with Index) 245. London and New York: Frederick Warne and Co., Ltd. 21s. net.

Wilshere's Criminal Procedure. Third Edition. By H. A. PALMER, M.A. (Oxon), of the Inner Temple, Barrister-at-Law, Assistant Master of the Supreme Court, and HENRY PALMER, M.A. (Oxon), of the Inner Temple, Barrister-at-Law. 1954. pp. xxiv and (with Index) 304. London: Sweet & Maxwell, Ltd. 22s. 6d. net.

The Evening News London Year Book, 1954. Second Year. Edited by GEORGE BEAL. pp. (with Index) 192. London: Associated Newspapers, Ltd. 1s. 6d. net.

Paterson's Licensing Acts. Sixty-second Edition. By F. MORTON SMITH, B.A., Solicitor, Clerk to the Justices for the City and County of Newcastle-upon-Tyne. 1954. pp. cxi, 1560 and (Index) 276. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £2 17s. 6d. net.

Key and Elphinstone's Precedents in Conveyancing. Fifteenth Edition. Volumes I and II. 1953. Vol. I, pp. clxxii and (with Index) 1467; Vol. II, pp. cliv and (with Index) 1241. London: Sweet & Maxwell, Ltd. £15 15s. net (three volumes).

REVIEWS

A.B.C. Guide to the Practice of the Supreme Court. Thirty-seventh Edition. By D. BOLAND, M.B.E., Clerk of the Lists, Queen's Bench Division. 1953. London: Sweet & Maxwell, Ltd. £1 10s. net.

The Preface roundly asserts that it is impossible to deal exhaustively with Supreme Court practice in so small a compass as that of this book. This is true, but in its way a tremendous advantage. When one asks of an expert in whatever subject a simple question of everyday importance, one does not want an exhaustive exposition in reply, but merely an answer that is brief, intelligible and helpful. In the vast field of High Court practice and the neighbouring paddocks where Bills of Sale and Deeds Poll are filed, Crown Office subpœnas issued, writs of inquiry sued out, and many similar practical measures taken, Mr. Boland is ever the perfect guide, not airing his knowledge but telling us what we need to know. We repeat that, for day-to-day purposes, this guide is adequate and is not so apt to distract with an undue emphasis on comparatively rare instances as is, inevitably, the encyclopædic Annual Practice. There are copious references to the White Book in case more detailed study becomes necessary.

Page 1 demonstrates at once a healthy perspective—" Acceptance of Service—see Undertaking to Appear." Thus the strict view is maintained without ignoring the popular slant. Turning the pages as directed, we see three concise paragraphs describing the proper form of a solicitor's undertaking to appear, its effect, and what happens should it be broken. It is a happy feature, successfully carried on from former editions of the book, that the greatest detail is given in those portions which are likely to be used by persons of least experience, such as the heading on Personal Service. Seldom does the need for brevity result in an obscure passage, though that surely is a fair description of the observation on the Bankers' Books Evidence Act, 1879, that where there is the slightest reason to suppose that the Act (*scilicet* s. 7) is being used " to obtain discovery in any shape," a summons is directed in lieu of an *ex parte* application for inspection. If these words are founded on *Parnell* v. *Wood* [1892] P. 137 they refer not to discovery as generally understood, but to an attempt to defeat the other party's privilege. An order for inspection under the 1879 Act can never be anything but a kind of discovery.

The book is one which ought to be in the hands of every indoor or outdoor litigation clerk. His principal, too, will find it valuable if only as an index to the White Book.

The Taxation of Gifts and Settlements by Stamp Duty, Estate Duty, Income Tax and Sur-tax. By G. S. A. WHEATCROFT, M.A. (Oxon), A Master of the Supreme Court (Chancery Division). 1953. London: Sir Isaac Pitman and Sons, Ltd. £2 2s. net.

It is not often that a book of this nature is written for practising solicitors by one who has himself been one of them, and it is not often that a book of this nature, no matter by whom or for whom it is written, reaches so high a standard of usefulness.

It is divided into two parts of approximately equal length. The first is an outline of Estate Duty, Income Tax, Sur-tax and Stamp Duties so far as they affect the subject-matter, and if your reviewer thinks that the last will be the most useful it is only because there are now available some excellent outline works on the other imposts whilst there is no readable book on Stamp Duties. In his preface the author asks that the book be read as a whole, and this request is to be endorsed: nevertheless it is in the second half, in which the law is sought to be applied, that the book reaches its highest standards. To many, perhaps, its chief value will lie in the manner in which it deals with the foundation, as it were, of gifts and settlements which are designed to decrease, rather than, as some appear to be, designed to increase, the burden of taxation. Apart from this, the book treats here and there with more out of the way matters which we seldom see discussed in print. Three examples may be given: the conferring of benefits by the alteration of articles of association (p. 87); the extent to which trustees may be liable to a claim for tax (p. 111 *et seq.*); and some interesting remarks on *Dale* v. *I.R.C.* [1953] 3 W.L.R. 448 (p. 115). All these will start interesting trains of reflection in the mind of the reader.

The last chapter mentions possible future changes in the design to make life more difficult for the practitioner in this field. It is perhaps in the nature of a compliment to say that the publication of this book will do nothing to postpone that evil day.

Your reviewer, as reviewers will, tried to "catch the author out": his only success was at p. 28, *n* 5; would not such a sale be caught by the Finance Act, 1940, s. 44 (1), as amended, so that the transaction would be a gift with a benefit reserved?

Finally, the index and tables are good, and the book is exceptionally well produced. If one says that one would expect it to be at the price, that is far from saying that the book is not very well worth two guineas to everyone interested, as everyone should be interested, in its subject-matter.

Income Tax Principles. By H. A. R. J. WILSON, F.C.A., F.S.A.A. 1953. London: H. F. L. (Publishers), Ltd. 12s. 6d. net.

There is no one who will complain that there is not an adequate choice of books on income tax, and here is yet another. The particular feature of this one is that it sets out to be not merely a students' book but an elementary students' book, and is designed to appeal in particular to those who approach the subject from a non-professional angle and to students for the intermediate examinations of the accountancy bodies. It will prove useful to anyone approaching our income tax law for the first time and will provide them with, as it were, a map of the wood which will assist them when they pass on to the study of the trees. The author has a large experience in writing and editing students' books, and the standard of exposition is high and is assisted by numerous illustrative examples.

Daly's Club Law. Fifth Edition. By C. J. COLLINGE, B.A. (Oxon.), a Chief Clerk of the Metropolitan Magistrates' Courts. 1954. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 18s. 6d. net.

This book is intended as a guide to both laymen and lawyers and is happily free from the defects sometimes shown by such books. It can confidently be recommended to all members of the legal profession as giving a brief but clear statement of the law relating to all types of clubs, with full references to relevant statutes and cases. Subjects of particular interest to the lawyer which are treated in the book include the jurisdiction of the courts and the expulsion of members, rights and liabilities in contract and tort, actions by and against clubs, sale of liquor and "permitted hours." The law is brought up to date by the inclusion of parts of the Licensing Act, 1953, as well as of other statutes, and by reference to cases decided in 1953. Perhaps, however, we may suggest that a lay secretary of a club would like fuller guidance on the Catering Wages Act and the holding of whist-drives.

The Lawyer's Companion and Diary, 1954. 108th year of publication. Editors: ERNEST L. BUCK and LESLIE C. E. TURNER. 1953. London: Stevens & Sons, Ltd., and Shaw and Sons, Ltd. £1 5s. net.

The Solicitors' Diary, 1954. 110th year of publication. Edited by EDWARD B. GILLHESPY, M.A. (Oxon), Solicitor. 1953. London: Waterlow & Sons, Ltd. No. 1, £1 11s. (one day on a page, half-bound leather); No. 2, £1 9s. 6d. (two days on a page, half-bound leather); No. 3, £1 1s. (three days on a page, cloth gilt).

It could probably be established, if anyone would take the trouble to do so, that nobody has ever been known to consult the common-or-garden desk diary for any information that he has not first written there himself, on the pages provided for that purpose. It is true that on the day we buy these works we commonly glance through the information sections with interest, for the pleasure of that well-equipped feeling that comes from knowing that we can turn up at a moment's notice the time of high-water at Westminster Pier or the date on which Ramadân ends, but the bizarre emergencies that we visualize never arise, and in ordinary emergencies the desk diary somehow gets neglected in favour of the timetable, the directory and the knowledgeable friend.

In the publications under review, however, the information provided is directed especially to the lawyer, and they are accordingly valued consultants as well as diaries. In addition to particulars of barristers, solicitors and legal officers, both at home and abroad, there are sections devoted to costs, death duties, income tax, oaths and affidavits, probate, registration and stamp duties. In the Solicitors' Diary there is also an index to principal Public General Acts, and in the Lawyer's Companion there is a miscellaneous section in which can be found notes on interest tables, intestacy, statutes with special names, and other matters.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

INCOME TAX: ACCOUNTANCY: BASE STOCK SYSTEM INAPPROPRIATE

Patrick (Inspector of Taxes) *v.* Broadstone Mills, Ltd.

Singleton, Birkett and Hodson, L.JJ. 11th December, 1953

Appeal from Vaisey, J.

A cotton spinning company had for many years consistently employed for all purposes a system of accounting known as the base stock system. Under it the raw cotton "clothing," i.e., actually on the machines (fixed process stock), appeared in the balance sheet but did not appear in the trading account at all, while an agreed weight of the cotton standing by the machines (spare process stock) was included in the trading account at a fixed or arbitrary figure. At a period when the price of cotton was rising considerably, the company was assessed to income tax for the year 1948–49 on the basis that all the fixed and spare process stock was brought into the trading account at a price representing the cost of the raw cotton plus the cost of processing it. The company appealed against that assessment to the Special Commissioners, who found that the base stock method was one of the methods recognised in the trade and was, as a method for computing profits, in accordance with sound commercial practice; and they allowed the appeal. On appeal by the Crown by case stated, Vaisey, J., held that the method was not appropriate for assessment to income tax, since it did not afford a true picture of the profits in any one year of charge. The company appealed.

SINGLETON, L.J., said that the company's contention was that their system was in accordance with principles of sound commercial accountancy and ought to be adopted to arrive at the company's liability for tax, while for the Crown it was said that it was not a proper way to show the full profit for the year in question for taxation purposes, and that no system would give the true profits for the year unless there was a valuation of stock at either market or cost price at the beginning and end of the accounting period. It was surely clear that the fixed process stock and spare process stock were both stock, that is, raw material bought for the purpose of being turned into yarn and paid for out of revenue. To make a correct valuation of stock the principle for guidance was s. 29 of the Finance Act, 1926, and other taxing provisions, the object of which was to find the profits or gains from the trade for the year of assessment. It was not sufficient to say that a particular system of accounting was well recognised and all right during normal times, if the other side contended that the system did not give a true result for the particular accounting year. That was the Crown's case before the Special Commissioners, but they had failed to consider that contention. His lordship stated as general propositions that (1) one cannot arrive at the profits of the year without taking into account the value of the stock at the beginning of and end of the accounting year; (2) the figures for stock were just as important as any other figures; (3) stock should be taken at cost or market price, whichever was the lower. The company's method of accounting did not meet those requirements for the relevant year. They had more stock, purchased out of income, than their trading account showed, and other stock was not taken at the right figure. He would dismiss the appeal.

BIRKETT, L.J., delivered a concurring judgment.

HODSON, L.J., agreed. Appeal dismissed.

APPEARANCES: *Cyril King*, Q.C., *S. M. Young* and *H. H. Monroe* (*Peacock & Goddard*, for *Barlow, Parkin & Co.*, Stockport); *Sir Andrew Clark*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 158**

LICENSOR AND LICENSEE: DANGEROUS PREMISES: APPRECIATION OF DANGER

Hawkins *v.* Coulsdon and Purley Urban District Council

Somervell, Denning and Romer, L.JJ. 17th December, 1953

Appeal from Pearson, J. ([1953] 1 W.L.R. 882; 97 SOL. J. 473).

The plaintiff was visiting a friend who resided in a house requisitioned by the defendant local authority, and was accordingly their licensee. When descending the front steps after dark, she suffered injury in consequence of the defective condition of one of the steps, which, combined with the insufficiency of light, amounted to a concealed and unusual danger. The physical facts which constituted the danger were known to the defendants through their officials, but they did not appreciate the risk involved. The trial judge, applying what he called the objective test, whether a reasonable man, having the knowledge which the defendants possessed, would have appreciated the danger, answered in the affirmative and found the defendants negligent in failing to take measures to avoid the danger. The defendants appealed.

SOMERVELL, L.J., said that the question was, whether the defendants could escape liability by not appreciating the risk involved, although a reasonable man would have done so. The judge below had proceeded on the basis that Willes, J., in *Gautret* v. *Egerton* (1867), L.R. 2 C.P. 371, had adopted the subjective test, but there were indications that he had in mind the objective test; and that seemed to be the view of Brett, M.R., in *Heaven* v. *Pender* (1883), 11 Q.B.D. 503, 514. Assuming, however, that Willes, J., had had in mind the subjective test, Pearson, J., had been right in holding that the decisions in the House of Lords dealing with accidents to children were authorities for the objective test in the present case. Such cases were, in a way, in a class apart, but there was no reason for applying a different test in deciding whether the licensor had knowledge of the danger. The appeal should be dismissed.

DENNING, L.J., agreeing, said that it had been said that the duty of an occupier to a licensee was only to warn of dangers actually known to the occupier, whereas his duty to an invitee was to warn him also of those which he ought to know. That distinction did not seem now to be well-founded. Formerly, by a strange extension of the doctrine of common employment, a sightseer in a works could get no redress for an injury caused by the negligence of a workman; but that had changed since the abolition of that doctrine in 1948. In the past, there had been distinctions between acts of commission and acts of omission. The distinction was illogical, and seemed no longer to be valid; the same act could be often regarded as either. It was an act of commission to leave slates in a road; it was an act of omission not to mark them by a red lamp. Once an occupier had knowledge of a state of affairs on his premises, then if he knew or ought to have known that it constituted a danger, he must take reasonable care to prevent damage. That was a departure from the principle stated in *Gautret* v. *Egerton*, but not from the actual decision, and in the last fifty years there had been many cases to show that no distinction could be drawn between acts of commission and of omission (e.g., *Pearson* v. *Lambeth Borough Council* [1950] 2 K.B. 353). Nowadays, when there was an unusual danger not obvious or known to a visitor, the occupier owed a duty to everyone lawfully on the premises to take reasonable care to prevent damage. There was now little difference left between a licensee and an invitee, which was not a matter for regret. In the present case, the defendants, by not mending the step, had failed to use reasonable care.

ROMER, L.J., agreed. Appeal dismissed.

APPEARANCES: *M. D. Van Oss* (*William Charles Crocker*); *F. Whitworth* (*Speechly, Mumford & Craig*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 122**

TOWN AND COUNTRY PLANNING: PURCHASE NOTICE SERVED ON LOCAL AUTHORITY BY FREEHOLDERS: MEANING OF "OWNER"

R. *v.* Minister of Housing and Local Government; *ex parte* Corporation of London

Somervell, Denning and Romer, L.JJ. 15th December, 1953

Appeal from a Divisional Court ([1953] 2 Q.B. 83; 97 SOL. J. 354).

The Town and Country Planning Act, 1947, provides by s. 19 (1): "Where permission to develop any land is refused . . . then if any owner of the land claims" [that there is no reasonably beneficial use for the land] ". . . he may . . . serve on the council . . . a 'purchase notice' requiring that council to purchase his interest in the land . . ." By s. 119 (1): ". . . except so far as the contrary is provided or the context otherwise requires . . . 'owner' . . . means . . . a person . . . who . . . is entitled to receive the rack-rent of the land or, where the land is not let at a rack-rent, would be so entitled if it were so let . . ." The Corporation of London were the assignees under a purchase notice served by the tenants of a lease for seventy-five years from 1925 at a ground rent of £750 a year of premises which, due to bomb damage, had in 1941 become a derelict site. In March, 1952, the trustees of the late owner of the freehold applied to the corporation as local planning authority for permission to develop the site, but the corporation, who proposed to incorporate the site in a road-widening scheme, refused permission. In September, 1952, the trustees purported to serve a notice on the corporation under s. 19 (1) of the Town and Country Planning Act, 1947, requiring the corporation to purchase their interest in the land. The corporation forthwith transmitted a copy of the notice to the Minister, at the same time expressing the view that the trustees as freeholders of the site in respect of which there was a leasehold interest were not "owners" within s. 19 (1) and, therefore, had no power to serve a purchase notice. The Minister, being of the opinion that he was not concerned with the question of ownership, but that his duties were confined to considering whether the conditions mentioned in s. 19 (1) were fulfilled, made an order confirming the notice. A motion by the corporation for an order of certiorari to quash the Minister's order was granted by the Divisional Court. The trustees appealed.

SOMERVELL, L.J., said that the definition, or something similar, was to be found in other Acts, and was always agreed to be obscure and difficult. In *Truman, Hanbury, Buxton and Co.* v. *Kerslake* [1894] 2 Q.B. 774, where there were a lease and a sub-lease at less than a rack-rent, it was held that the sub-lessee was the "owner." That case had been doubted in *Rawlence* v. *Croydon Corporation* [1952] 2 Q.B. 803; if it was right, and the sub-letting had been unlawful, there would have been no "owner" at all. It was not possible to read the definition so as to disregard existing leases other than the ground lease. On that view, it was not appropriate to s. 19, which required that "any owner" should include persons whose ownership was damaged by sterilisation; that clearly covered the freehold reversioner. The appeal should be allowed.

DENNING, L.J., agreeing, said that the Act contemplated that there might be more than one "owner," as was shown by the phrases "*any* owner" in s. 19 (1) and "*a* person" in s. 119 (1). The words "if it were so let" could mean either (1) "if it were to be so let," or (2) "if it had been so let." In the present case, Hamptons, the tenants at £750 a year, had been paying less than a rack-rent, and if the premises were to be let in 1951 at a rack-rent, they would be the persons entitled to it and would be "owners." In 1951 the trustees would be the persons entitled, and "owners," if the premises had been let at a rack-rent. There was no reason why s. 119 should not be given this two-fold meaning, whether *Truman's* case, *supra*, was right or not. Accordingly, the freeholders were "owners"; alternatively, the context of s. 19 (1) "required otherwise," as Parliament must have intended that the freeholders could insist on being bought out.

ROMER, L.J., agreed. Appeal allowed. Leave to appeal conditional on payment of costs.

APPEARANCES: *H. Heathcote-Williams*, Q.C., and *O. Lodge* (*Boxall & Boxall*); *H. B. Williams* and *D. Walker-Smith* (*Comptroller and City Solicitor*); *J. P. Ashworth* (*Solicitor, Ministry of Health; Solicitor, Ministry of Housing and Local Government*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 103**

QUEEN'S BENCH DIVISION

COUNTY COURT: JURISDICTION: ACTION BY MORTGAGEE FOR RECOVERY OF LAND

R. *v.* Judge Willes; *ex parte* Abbey National Building Society

Lord Goddard, C.J., Sellers and Havers, JJ. 15th October, 1953

Motion for mandamus.

By a legal charge made between the owner of a house as mortgagor, a building society as mortgagee and the defendant as surety, the owner attorned tenant of the house to the building society. The legal charge exceeded £500 and contained a power of sale in the event of instalments falling into arrears. The owner died and after her death the defendant was in possession of the house. The instalments under the charge having fallen

into arrears, the building society brought an action for possession in the county court against the defendant. Before the case was called the defendant orally agreed to consent to judgment. The judge refused to hear the case, holding that he had no jurisdiction since it was an action to enforce a charge. The building society moved for an order of mandamus directing the county court judge to hear and determine the action.

LORD GODDARD, C.J., said that under ss. 43 and 53 of the County Courts Act, 1934, the county court had jurisdiction to entertain any common law or equity proceedings if the parties so agreed in writing. The judge had given the parties no chance to do that. His view seemed to have been that the plaintiffs were mortgagees seeking to enforce a charge on land worth less than £100 a year, and that, though he could have entertained an action for the recovery of land, he had no jurisdiction to enforce a charge. He had overlooked Ord. 24, r. 4 (2), of the County Court Rules, 1936, which provided that in an action for possession of property forming a security for principal money or interest, a judgment for the plaintiff should include an order in the terms of Form 385, which declared that the plaintiff should recover and that the defendant should give up possession, subject to redelivery if the defendant should pay all moneys due. Quite apart from consent, the judge had ample jurisdiction to try the case. This was not an action between mortgagor and mortgagee, but between a man who was in possession and the plaintiffs, who had a better title. The order must go.

SELLERS and HAVERS, JJ. agreed. Application granted.

APPEARANCES: *W. W. Stabb* (*Butt & Bowyer*, for *A. J. Cash and Sons*, Derby).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 136

CONFLICT OF LAWS: INSURED PROPERTY IN HAIFA: INSURANCE MONEY: CLAIMS OF OWNER AND CUSTODIAN OF ABSENTEE PROPERTY

F. & K. Jabbour *v.* Custodian of Israeli Absentee Property

Pearson, J. 27th November, 1953

Interpleader action.

By a policy of insurance dated 21st November, 1947, issued by an English insurance company through their agents in Haifa, the company agreed to cover the plaintiffs against loss in respect of a garage owned by them at Haifa. In January, 1948, the garage was blown up during riots, the loss being covered by the policy. Shortly afterwards the plaintiffs left Haifa and went to reside in Egypt where they had remained ever since. In May, 1948, the British mandate in Palestine was terminated and the State of Israel was proclaimed. By emergency regulations passed in December, 1948, a custodian of absentee properties was appointed and it was the duty of every person to deliver up to the custodian any property of an absentee which was under his control, and if such property was a liability towards the absentee such person was to discharge the liability to the custodian. "Absentee" was defined as any person who was the lawful owner of any property in the area of the regulations and who on and after 29th November, 1947, was in, *inter alia*, Egypt. "Property" was stated to include movables, moneys and a right to property. From 31st December, 1949, the insurance company ceased to accept new business in Israel and there was no evidence that the company's agents there had authority thereafter to conclude settlements without referring to the company. In 1950 the Absentee Property Law came into force and was in substantially the same terms as the regulations, and provided that the law should be read as one with the regulations. In the action the plaintiffs and the custodian each claimed to be entitled to the sum of £5,039 4s. admitted by the insurance company to be payable under the policy.

PEARSON, J., said that the claim against the company was a claim for unliquidated damages and, as such, was a chose in action. It was established by the decided cases that not only debts, but also other choses in action, were for legal purposes localised and situated where they were properly recoverable and they were properly recoverable where the debtor resided. A corporation resided in a country if it carried on business there at a fixed place of business and in the case of an agency the test to be applied to determine whether the corporation was carrying on business at the agency was to ascertain whether the agent had authority to enter into contracts on behalf of the corporation without submitting them to the corporation for approval. On the facts the company was proved to have had a residence in Haifa up to 31st December, 1949, and the chose in action was properly receivable there up to that date, being the primary place of payment according to the ordinary course of business. On construction, the chose in action was a "movable" within the meaning of the regulations, the law of 1950, and as generally understood, and was therefore "property"; accordingly, the plaintiffs were absentees. In view of the general rule that legislation should be construed as applying only within the proper territorial limits unless the contrary intention appeared, and having regard to the terms and evident scope of the law, namely, to regulate ownership of and dealings with property in Israel of absentees as defined, the law was confined to property situated in Israel, and if the custodian had to show that the chose in action was caught *de novo* by the law, which on a proper construction of the law, he did not, he would fail because it was not proved that the chose in action was situated in Israel at any time after the law came into force. In the result the claim against the company was vested in the custodian under the regulations and remained vested in him under the law. Counsel for the custodian had contended that the law by which a debt or chose in action could properly be affected was the proper law of the contract, rather than the *lex situs*, but there was a considerable weight of authority in favour of the view that only the *lex situs* could alter the title to debts and choses in action and, on principle, if an action to recover a debt or chose in action was brought in the country where it was properly recoverable, and therefore situated, and if there was a conflict between the *lex situs* and the proper law, the court trying the action would be bound by its own law, which was the *lex situs*. The proper law of the insurance contract was the *lex loci contractus* which was the law of the mandated territory in Palestine up to the date of the termination of the mandate and thereafter the law of Israel. The regulation and law were measures of economic warfare analogous to the English legislation relating to the custodian of enemy property, and on the assumption that, according to their true construction, their operation was in general confined within proper territorial limits, neither the regulations nor the law were confiscatory. Judgment for the custodian.

APPEARANCES: *J. Megaw*, Q.C., *I. Baillieu* (*Stoneham & Sons*); *L. Caplan* (*Herbert Oppenheimer, Nathan & Vandyk*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 139

LIMITATION: CLAIM BASED ON MISTAKE

Phillips-Higgins *v.* Harper

Pearson, J. 10th December, 1953

Action.

In 1938, the plaintiff and the defendant made an oral agreement whereby the defendant agreed to pay to the plaintiff, in consideration of her services as an assistant solicitor, a basic weekly salary plus an annual sum to bring her total remuneration up to a proportion of the profits. From 1938 to 1950 the defendant paid the plaintiff, in addition to her basic salary, an annual sum which purported to be her proper share under the terms of the agreement and which she accepted as such. In 1951, she discovered that the annual sums paid to her had in fact been underpayments according to her understanding of the 1938 agreement. She accordingly brought proceedings against the defendant claiming a declaration as to her entitlement under the agreement; an account of the net profits of the practice and all moneys received by the defendant on account of the practice from 1938 to March, 1950; and an order for payment of any sums found due to her on the taking of such an account. The defendant pleaded *inter alia* that the action was barred by the Limitation Act, 1939, in respect of the plaintiff's claims prior to October, 1945, whereupon the plaintiff replied that the operation of the Act was excluded or the time extended by reason of ss. 19 (1) (*b*), 23 (4) or 26 of the Act in that there had been a fiduciary relationship between the parties and the defendant had received money as trustee for her; alternatively, that the defendant had acknowledged her claim; and, further and alternatively, that her action arose as the result of a mistake within the meaning of s. 26 of the Act.

PEARSON, J., said that *prima facie* any account for the years before 1946–7 was barred. There was no fiduciary relationship such as to bring s. 19 into effect, and the defendant had never acknowledged the plaintiff's right to recover "any debt or other liquidated claim" so as to bring in s. 23. By s. 26 (1), if "(*a*) the action is based upon the fraud of the defendant . . ., or (*b*) the right of action is concealed by the fraud of any such person as aforesaid, or (*c*) the action is for relief from the consequences of a mistake, the period of limitation shall not begin to run until

the plaintiff has discovered the fraud or mistake." In the subsection, fraud and mistake were treated differently; it did not apply when a right of action was concealed from the plaintiff by a mistake; it was directed to a case where a mistake had had certain consequences, and the plaintiff sought to be relieved from those consequences, e.g., money paid, or a contract entered into, or an account settled in consequence of mistakes. The mere operation of the Act, unless excluded by the subsection, was not a relevant consequence; if there would be no consequence except the operation of the Act, and the operation of the Act was excluded, then there was no consequence at all. Probably (*c*) applied only where the mistake was an essential ingredient of the cause of action, so that the statement of claim must set out the mistake and its consequences, and claim relief therefrom. Here, the action was for an account, and not for relief from the consequences of a mistake; the plea of limitation accordingly succeeded. The plaintiff was entitled to an order for an account as from 1946, and to judgment for such a sum as that account should show to be due. Judgment accordingly.

APPEARANCES: *R. M. Wilson*, Q.C., and *J. P. Comyn* (*Walters & Hart*); *J. Platts-Mills* (*Edwin Coe & Calder Woods*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 117

PROBATE, DIVORCE AND ADMIRALTY DIVISION

NEGLECT TO MAINTAIN CHILD ONLY: ORDER FOR WIFE

Starkie *v.* Starkie (No. 2)

Lord Merriman, P., and Collingwood, J. 17th November, 1953

Appeal from Cockermouth justices.

The parties were married on 16th August, 1952, and there was one child, born before the marriage, in February, 1952. They separated on 31st August, 1952, in circumstances assumed by the Divisional Court to have been against the wife's consent. The parties resumed cohabitation on 11th July, 1953, and there was evidence that the husband had been contributing to the maintenance of his wife and child during this separation. On 20th July, 1953, the parties again separated, and it was found in respect of this separation that the wife consented to it without any stipulation, express or implied, that he should maintain her while they lived apart. On 24th July, 1953, the wife issued a summons alleging desertion and wilful neglect to maintain both her and the child, and on 10th August, 1953, the justices dismissed the complaint of desertion but made an order of 20s. a week for the wife and 30s. a week for the child. The husband appealed, and on 30th October, 1953, the Divisional Court referred the matter back to the justices for a proper statement of their reasons (see [1953] 1 W.L.R. 1396; 97 SOL. J. 798).

LORD MERRIMAN, P., referred to the answers given to the questions sent to the justices by the court and said that in view of the consensual nature of the separation which the justices had found, and the absence of stipulation as to maintenance, there was no neglect to maintain the wife (*Baker* v. *Baker* [1950] W.N.29; 66 T.L.R. (Pt. 1) 81; *Stringer* v. *Stringer* [1952] P. 171). His lordship further held that the wife's failure to establish neglect to maintain herself did not bar her from proving neglect to maintain the child, and upon the evidence there had been such neglect, and such neglect was wilful; and applying *Kinnane* v. *Kinnane* [1953] 3 W.L.R. 782; 97 SOL. J. 764, held further that since in cases under the Married Women (Separation and Maintenance) Acts, 1895–1949, where the wife is the complainant, any order which is made is an order in favour of the wife, the wife was entitled in view of the finding of neglect to maintain the child to any of the orders permissible under the Act of 1895, including an order for custody, and also an order for the maintenance of herself. But the court, in assessing in its discretion the amount of any order in favour of the wife, would consider her conduct; and in the circumstances of the present case, where the wife had failed to establish the two complaints concerning herself, the proper order would be a nominal one, which might be varied later.

COLLINGWOOD, J., concurred. Appeal allowed.

APPEARANCES: *W. B. Sneade* (*Beachcroft & Co.*, for *Curwen and Co.*, Workington); *D. R. Ellison* (*H. S. Law* with him) (*Speechly, Mumford & Craig*, for *Paisley, Falcon & Highet*, Workington).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 98

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Act of Sederunt (Registration Appeal Court), 1953. (S.I. 1953 No. 1924 (S.129).)

Acute Rheumatism Regulations, 1953. (S.I. 1953 No. 1928.) 5d.

Burgess Hill Water Order, 1953. (S.I. 1953 No. 1926.) 5d.

Coastal Flooding (Acreage Payments) Scheme (No. 2), 1953. (S.I. 1953 No. 1920.) 6d.

Mayor's and City of London Court Funds Rules, 1953. (S.I. 1953 No. 1919 (L.14).) 8d.

These rules, which came into operation on 1st January, consolidate with minor amendments the similarly named rules of 1934 and 1947.

Mersey Channel (Collision Rules) Order, 1953. (S.I. 1953 No. 1906.) 6d.

Purchase Tax (No. 1) Order, 1954. (S.I. 1954 No. 1.)

Purchase Tax (No. 2) Order, 1954. (S.I. 1954 No. 2.)

Purchase Tax (No. 3) Order, 1954. (S.I. 1954 No. 3.)

Road Haulage Wages Council Wages Regulation (Amendment) (No. 2) Order, 1953. (S.I. 1953 No. 1930.) 6d.

Stopping up of Highways (Warwickshire) (No. 7) Order, 1953. (S.I. 1953 No. 1922.)

Stopping up of Highways (Worcestershire) (No. 10) Order, 1953. (S.I. 1953 No. 1923.)

Wages Regulation (Industrial and Staff Canteen Undertakings) (Amendment) Order, 1953. (S.I. 1953 No. 1929.) 5d.

Woking Water Order, 1954. (S.I. 1954 No. 4.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

SOCIETIES

Mr. Justice Glyn-Jones was the principal guest at the annual dinner of the INCORPORATED LAW SOCIETY OF CARDIFF AND DISTRICT held at the Park Hotel, Cardiff, on 6th January. The toast "The Cardiff and District Law Society" was proposed by His Honour Judge L. C. Thomas, who was during the evening presented with a watch and an appreciation printed on vellum to mark his recent retirement.

At the monthly meeting of the board of directors of the SOLICITORS' BENEVOLENT ASSOCIATION held on 6th January, the death of their colleague, Mr. Horace Bright, of Nottingham, was learned of with much regret. Mr. Colin A. Dawson, M.A., of London, was elected a member of the Board. Twenty-nine solicitors were admitted as members of the Association, bringing the total membership up to 7,672. Grants and annuities totalling £5,765 12s. were made to fifty-five beneficiaries, £380 of which was in respect of "special" grants for clothing, convalescence, etc.

The support of those solicitors who have not yet joined their own professional benevolent association is earnestly sought; the minimum annual subscription is £1 1s., and a life membership subscription £10 10s. Further information will gladly be supplied on request to the Secretary, Clifford's Inn, Fleet Street, London, E.C.4.

The new president and vice-president of the INCORPORATED LAW SOCIETY OF LIVERPOOL were appointed on 22nd December, 1953. They are Mr. T. W. Harley and Mr. Roy W. Abercromby.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce that one or two rugby matches are being arranged against other societies, to be played on weekday afternoons, including a match against the Chartered Accountants on 18th March. Members who are interested and available to represent the society are asked to send their name, address, position on the field, and the club and team for which they are now playing, to Mr. Michael Coles, S.A.C.S., The Law Society's Hall, Chancery Lane, W.C.2.

POINTS IN PRACTICE

Rent Restriction—Rent Fixed by Rent Tribunal—Subsequent Verbal Agreement to Provide Services at Additional Charge—Effect

Q. A landlord of a block of flats does not in his lease covenant to supply certain services such, for example, as the provision of a caretaker, cleaning of the common staircases and passages, etc. Recently there was an application to the rent tribunal under the Landlord and Tenant (Rent Control) Act, 1949, and the rent of the various flats was fixed. After the rent was fixed the landlord's agent verbally agreed with the tenants to supply certain of the services mentioned above in consideration of the tenants paying a small additional charge each quarter. The landlord's solicitors are anxious to find authority as to whether or not the landlord is entitled to make this charge and any recent cases bearing on the point.

A. It is in our opinion possible, at all events if the verbal agreement were made so as to be determinable with the tenancy agreements, that the effect might be either the variation of the old agreement or the surrender of that agreement coupled with the grant of a new tenancy; and that, by reason of the provisions of s. 12 (2) of the Furnished Houses (Rent Control) Act, 1946, the result would be a "contract" within the meaning of that Act ("a contract whereby one person . . . grants to another person . . . the right to occupy as a residence a house . . . in consideration of a rent which includes payment for the use of furniture or for services . . ."). This although, if the agreement for cleaning, etc., were made with some third party, the 1946 Act would not apply. The opening paragraph of Lynskey, J.'s judgment in *R.* v. *Croydon and District Rent Tribunal; ex parte Langford Property Co., Ltd.* [1948] 1 K.B. 60 shows how the suggested result might be attained. If, however, such were the result, a tenant might apply for a reduction in rent, but the tribunal could not reduce the figure below the figure fixed as standard rent plus any recoverable increases; recoverable, that is, under the provisions of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939 (*R.* v. *Paddington and St. Marylebone Rent Tribunal; ex parte Bedrock Investments, Ltd.* [1948] 2 K.B. 413 (C.A.)).

Will—Legacy Permitted to be Paid to Parent or Guardian of Infant—Whether Recipient Becomes Trustee

Q. In the Encyclopedia of Forms and Precedents, 3rd ed., vol. 18, at p. 820, there is a form (Precedent 162) for legacy to an infant in which it is stated that if at the date of the testator's death the infant shall be under twenty-one the receipt of his parent or guardian shall be a full discharge to the testator's trustee. In the unlikely event of the parent or guardian refusing to accept the legacy, presumably the testator's trustee would be under obligation to pay the money into court under s. 42 of the Administration of Estates Act, 1925, but would the parent or guardian make himself into a trustee by accepting the money and giving a receipt to the extent that the infant could call upon the parent or guardian if so required for an account on attaining twenty-one years of age, and treat the parent or guardian in other ways as a strict trustee?

A. If the parent or guardian should refuse to give a receipt for such a legacy as is mentioned by our subscriber the personal representatives would be entitled to pay into court or appoint willing trustees (such as themselves) under s. 42 of the Administration of Estates Act, 1925. We have not found any authority which would indicate that a parent or guardian becomes an express or constructive trustee of a legacy for which he gives a receipt on behalf of an infant. It seems to us unnecessary to imply a trust in such circumstances as the infant would have a common-law action against the recipient for money had and received to the use of the legatee besides being able to claim an account, also at common law.

Will—Named Daughter Entitled to Share of Residue Predeceases Testatrix—Wills Act, 1837, s. 33—Daughter Domiciled in Canada—Payment of Share

Q. A, who died recently, gave her residuary estate to her executor trustee upon trust for sale and to divide proceeds amongst two named daughters (one-quarter each) and grandchildren living at her decease (one-half). One daughter predeceased the testatrix, leaving a child or children. She was domiciled in Canada and died intestate. It is assumed that s. 33 of the Wills Act, 1837, applies and that the executor will pay the deceased daughter's share to the personal representative appointed in Canada. Please confirm.

A. We confirm that, in the circumstances of the question, s. 33 of the Wills Act, 1837, operates so as to prevent the lapse of the bequest of the share of residue in favour of the deceased daughter and that such share is payable as if the daughter had died immediately after *A*. The share of residue is, however, an English asset, and a personal representative will have to be constituted in this country. The procedure depends upon the province of Canada in which the deceased daughter died domiciled and in which the local grant of representation (if any) has been taken out. If this was any province other than Quebec, New Brunswick or Prince Edward Island, the Canadian grant can be re-sealed under the Colonial Probates Act, 1892. If, however, the personal representative was constituted under the law of any of the three named provinces, an original grant must be applied for here by the person entitled in respect of the daughter's estate.

Will—Devise of Freehold Property Subject to Bond for Annuity—Creation of Settlement within Settled Land Act, 1925, s. 1 (1) (v)

Q. By his will in 1938 *A* appointed his wife *B* and his son *C* to be executors and trustees thereof, and gave *C*, *inter alia*, certain freehold premises and the goodwill of a business carried on thereon for his own use and benefit absolutely, but conditionally on *C* entering into a bond to the trustees to secure the payment by *C* of all business liabilities subsisting at the date of his death and conditionally upon *C* entering into a bond to secure to *B* during her life the sum of £2 per week for her own use and benefit. *A* died in 1940 and his will was proved by *B* and *C*. *C* died in 1951, leaving a will, and *B* died in 1952, also leaving a will. Before her death *B* had appointed *D* as a trustee of the will of *A* in place of *C*. Were the freehold premises settled by the will of *A*, having regard to the bonds which *C* executed? In that event, as no vesting assent was made in *C's* favour, will the vesting of the freehold property in the person entitled under *C's* will have to be carried out by *B's* executors? *C* has been in possession since the date of his father's death. If the land was not settled by the will can *D* and a new trustee vest the property in *C's* devisee?

A. In our opinion the legal estate in the freehold premises is settled land under a settlement created by the will of *A* in accordance with the provisions of the Settled Land Act, 1925, s. 1 (1) (*v*). *Re Bird; Watson* v. *Nunes* [1927] 1 Ch. 210 (land devised to trustees, subject to annuities); *Re Ogle's Settled Estates* [1927] 1 Ch. 229 (tenant in fee simple, subject to family charges); and *Re Gaul and Houlston's Contract* [1928] Ch. 689 (joint tenants entitled subject to a charge) bear some resemblance to the present case. On this basis, and as no vesting assent has been executed, the legal estate will have remained vested in the personal representatives of *A*, and the executors of *B* as the personal representatives of the last surviving of *A's* executors should now vest the property in *C's* personal representative or in *C's* devisee with the concurrence of *C's* personal representative. The appointment of *D* as an additional trustee would not appear to affect the matter, nor even to have been necessary or effective.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

NOTES AND NEWS

Honours and Appointments

Mr. NORMAN SYDNEY FISHER, senior assistant solicitor to Derby Corporation since 1950, has been appointed deputy town clerk of Derby. He succeeds Mr. G. H. E. Jones, who was appointed town clerk.

Mr. DAVID HALL, assistant solicitor to Reading Corporation, has been appointed senior assistant solicitor, and Mr. JOHN FREEMAN CHATFIELD, assistant solicitor with the Borough of Shrewsbury, has been engaged in the position made vacant by the promotion of Mr. Hall.

Mr. ALLAN FREDERICK MARTIN, assistant solicitor to Fulwood Urban District Council, has been appointed deputy clerk to Frimley and Camberley Urban District Council.

Mr. DONALD MATHIESON, deputy town clerk of Heston and Isleworth, has been appointed town clerk of the borough.

Mr. JAMES PETER MYERS, solicitor, of Otley, has been appointed solicitor to the West Riding County branch of the National Farmers' Union. He succeeds Mr. C. H. Charlesworth.

Mr. DENNIS ALFRED TRANAH, deputy town clerk of Boston, Lincs, has been appointed deputy town clerk of Eastleigh, Hants, as from 25th January. He is to succeed Mr. FREDERICK GEORGE EDWARD BOYS, who has been appointed town clerk of Louth, Lincs.

Personal Notes

Mr. Ernest Herman Edwards, managing clerk of the British Transport Commission's legal service, was awarded the M.B.E. in the New Year Honours List.

Mr. Geoffrey Edward Green, solicitor, of Lower Regent Street, London, S.W.1, was married on 2nd January to Miss Joy Anne Willcocks, of Beaconsfield.

Mr. Harold William Francis Grimwade, solicitor, of Hadleigh, retired recently at the age of eighty-one, after being clerk to the Boxford magistrates for thirty years.

Mr. Christopher A. Simpson, clerk to the Leeds Stipendiary Magistrate for the past seven years, retired on 31st December, 1953, after forty-eight years' service with the Leeds Magistrates' Clerk's Department. On 30th December he was presented with a portable typewriter and a fountain pen and pencil on behalf of the solicitors in Leeds, and a table lighter on behalf of the city's probation service.

On his retirement, Mr. Harold Swann, town clerk of Heston and Isleworth for the past twenty years, was presented with a television set.

Mr. Francis Gerald Whittuck, solicitor, of Keynsham, and clerk to Keynsham and Weston (Bath) magistrates for thirty-one years, is to retire at the end of April.

Miscellaneous

It is announced that applicants for silk who wish their names to be considered for the next list of recommendations should send their applications to the Lord Chancellor's Office before Monday, 22nd February, 1954. Those who have already made applications should renew them before that date.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

SURVEY OF PUBLIC RIGHTS OF WAY

The following notices of the preparation of draft maps and statements under s. 27 of the above Act, or of modifications to draft maps and statements already prepared, have appeared since the tables given in vol. 97.

Surveying Authority	Districts covered by draft map and statement	Date of notice	Last date for receipt of representations or objections
Canterbury City Council	City of Canterbury	26th November, 1953	1st May, 1954
Cheshire County Council	Congleton Municipal Borough, Alsager, Middlewich, Northwich, Sandbach and Winsford Urban Districts, and Congleton and Northwich Rural Districts	8th December, 1953	19th April, 1954
Cornwall County Council	Helston and Penryn Boroughs, City of Truro, and Truro Rural District	19th November, 1953	31st March, 1954
Derbyshire County Council	Swadlincote Urban District and Repton Rural District	27th November, 1953	31st March, 1954
Durham County Council	Administrative County of Durham: modifications to draft map and statement of 12th December, 1952	18th December, 1953	22nd January, 1954
East Sussex County Council	Rye Borough and Battle and Uckfield Rural Districts	4th December, 1953	5th April, 1954
Huntingdonshire County Council	Huntingdon County	14th December, 1953	29th April, 1954
Isle of Ely County Council	Isle of Ely County	15th December, 1953	30th April, 1954
Lincoln County Council, Parts of Lindsey	Scunthorpe Borough, Barton-upon-Humber and Brigg Urban Districts, and Glanford Brigg and Isle of Axholme Rural Districts	4th December, 1953	16th April, 1954
Middlesex County Council	Administrative County of Middlesex (other than parts excluded by resolution)	8th December, 1953	31st May, 1954
Northamptonshire County Council	Brackley Rural District: further modifications to draft map and statement of 6th January, 1953	4th January, 1954	14th February, 1954
	Daventry Borough: modifications to draft map and statement of 9th February, 1953	4th January, 1954	14th February, 1954
	Oundle Urban District	9th December, 1953	29th April, 1954
	Oundle and Thrapston Rural District	9th December, 1953	29th April, 1954
	Raunds Urban District	9th December, 1953	29th April, 1954
Radnorshire County Council	Radnor County	12th December, 1953	31st May, 1954
Soke of Peterborough County Council	Administrative County of the Soke of Peterborough	18th December, 1953	30th April, 1954
Southampton County Council	Basingstoke Borough and Rural District: modifications to draft map and statement of November, 1952	24th November, 1953	8th January, 1954
	Havant and Waterloo Urban District: modifications to draft map and statement of May, 1953	December, 1953	15th January, 1954
	Kingsclere and Whitchurch Rural District: modifications to draft map and statement of April, 1953	4th January, 1954	12th February, 1954
Staffordshire County Council	Seisdon Rural District and Tettenhall Urban District	4th December, 1953	30th April, 1954
Westmorland County Council	Lakes Urban District	9th December, 1953	30th April, 1954
West Sussex County Council	Crawley Parish	17th December, 1953	1st May, 1954

In addition a *provisional* map and statement has been announced by Darlington County Borough Council covering the County Borough of Darlington, in respect of which applications to quarter sessions would now be out of time.

Southampton County Council announce that they have prepared *provisional* maps and statements covering Gosport Borough and Fareham Urban District, in respect of which applications to quarter sessions would now be out of time.

West Hartlepool County Borough Council announce that the period within which representations or objections may be lodged to the draft map and statement of Public Rights of Way in West Hartlepool County Borough (see 97 SOL. J. 820) has been extended to 8th April, 1954.

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